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January 11, 2013

**VIA HAND DELIVERY**

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: RR 12L-87  
Response from Winning Our Future, Brent A. Mudd**

Dear Mr. Jordan:

This letter is submitted on behalf of Winning Our Future ("the Committee") and Brent A. Mudd, the Committee's treasurer, in response to the above-captioned referral from the Reports Analysis Division ("RAD") of the Federal Election Commission ("the Commission").<sup>1</sup>

This RAD referral stems purely from inadvertence, the product of a newly-formed independent expenditure-only committee, with a small and inexperienced team, that received over \$15 million in its first two months of operation and spent over \$9 million in just its first six weeks. The vendors also were small organizations, and some lacked significant experience in election campaigns. Unsurprisingly, in those first couple of months, there were some miscommunications and oversights regarding certain 24-hour reports.

The circumstances here counsel in favor of dismissal based on the exercise of the Commission's prosecutorial discretion. Unlike a complaint or audit-generated matter, the matters at issue came to light only because of self-initiated steps to correct the public record, which were followed by efforts to strengthen the Committee's internal procedures. In some cases, the independent expenditures at issue were disclosed just days after the 24-hour reporting

<sup>1</sup> Along with this letter, we submit the Affidavit of Brent A. Mudd as Attachment A.

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deadline, with almost all of the others reported in conjunction with the next monthly report. As such, the public was not deprived of material information or misinformed about the activities of this Committee. In fact, this Committee's fundraising and spending received extensive media attention every day during the relevant period, reflecting information contained in FEC reports as well as from other sources.

## **I. THE REPORTING MATTERS AT ISSUE WERE DUE TO INADVERTENCE**

Winning Our Future is an independent expenditure-only committee, formed on December 13, 2011. It is one of the first and very few independent expenditure-only committees to participate actively in connection with a Presidential election. Brent A. Mudd, a certified public accountant, has been the Committee's treasurer since inception. Two members of the Committee's board of directors, Rebecca A. Burkett and Gregg Phillips, directed the Committee's day-to-day activities during the relevant period. The Committee has never had any paid employees.<sup>2</sup> Prior to its formation, the Committee retained the undersigned counsel to assist with compliance, and staff received training regarding FEC reporting and recordkeeping requirements. Mr. Mudd also consulted with counsel on a continuing basis from inception through the present.<sup>3</sup>

During the life of this Committee – barely more than a year – it has made independent expenditures totaling \$17,008,038. Of that amount, about \$14.8 million – or 87% – were made in January and February 2012. During those two months, Mr. Mudd received hundreds of invoices and was in constant communication with vendors, Ms. Burkett and Mr. Phillips, and periodically with counsel. Mr. Mudd reviewed and paid each of those invoices, verifying the receipt of a W-9 tax form from each vendor and obtaining authorization from both Mr. Phillips and Ms. Burkett. Mr. Mudd also maintained a spreadsheet of expenditures and receipts, which he sent to counsel to assist in preparing and filing monthly reports.<sup>4</sup>

This extraordinary volume of activity in the first two months of the Committee's operation led to miscommunications and oversights regarding certain 24-hour reports. For instance, the Committee had to rely on vendors to notify them almost immediately regarding when and where particular advertisements began running, and what payments corresponded to particular ads. The Committee interacted with multiple vendors: the referral alone involves expenditures to nine of them. While the Committee repeatedly requested information from

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<sup>2</sup> Affidavit of Brent A. Mudd, at ¶¶ 1-3.

<sup>3</sup> Affidavit of Brent A. Mudd, at ¶ 5.

<sup>4</sup> Affidavit of Brent A. Mudd, at ¶¶ 4, 6-7.

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vendors and supplied reminders concerning the triggers for 24-hour reporting, information was sometimes received after a 24-hour report was required or in piecemeal fashion. In addition, a lack of experience with FEC reporting rules, both on the part of the Committee and some of the vendors, contributed to uncertainty about when and whether particular expenditures were subject to 24-hour reporting.<sup>5</sup>

## II. THE COMMITTEE TOOK PROMPT AND CORRECTIVE STEPS TO COMPLETE THE PUBLIC RECORD AND STRENGTHEN INTERNAL PROCEDURES

The Commission has long recognized through policy statements and dispositions in other Matters Under Review ("MURs") that dismissal is appropriate when a committee has taken prompt corrective action prior to a referral or other enforcement action. For example, in MUR 5198, the Commission found that where a committee failed to properly report two candidate loans, totaling over \$4 million, but filed an amendment correcting the matter months later, such an "inadvertent" reporting mistake followed by "prompt corrective action before the initiation" of an enforcement matter merited a reason to believe finding followed by a dismissal.<sup>6</sup> In other cases, the Commission has also recognized that "expeditious action" to correct reporting omissions and mistakes by a committee that do not harm the electoral process should result in a dismissal.<sup>7</sup> And while the Commission's *sua sponte* policy does not apply in this context, it notes that the Commission will consider in mitigation whether the respondent has "expeditiously corrected and clarified the public record by making appropriate and timely disclosures as to the funds involved in the violation."<sup>8</sup>

All of the reporting matters at issue here were remedied by the Committee, on its own initiative, either within a few days after a 24-hour report was required or in the course of preparing the next monthly report in February. Indeed, in March 2012, Mr. Mudd reviewed and strengthened the Committee's procedures for tracking and reporting independent expenditures, and began forwarding to counsel, upon receipt, all invoices and email communications with

<sup>5</sup> Affidavit of Brent A. Mudd, at ¶¶ 7-10.

<sup>6</sup> MUR 5198 (Maria Cantwell, Cantwell 2000 Committee), First General Counsel's Report 15 (2004).

<sup>7</sup> MUR 6085 (Illinois Victory 2008), General Counsel's Report 2 (2009) (finding no reason to believe the committee violated campaign finance law where the committee did not include memo entries for staff salaries on three monthly reports, but had amended all three a few months later). See also MUR 5178 (Byrum for Congress) (2001) (making a reason to believe finding but taking no further action where the committee made an unintentional mistake in reporting a coordinated expenditure).

<sup>8</sup> Statement of Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. 16695 (April 5, 2007).

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vendors.<sup>9</sup> While the Committee's efforts in January and February at times fell short, the Committee acted expeditiously to check and reconcile records, contact vendors to obtain and clarify information, and amend its reports in an effort to present a complete and accurate public record. Under these circumstances, dismissal is appropriate.

### III. THERE WAS NO HARM TO THE ELECTORAL PROCESS

The purpose of reporting requirements is to "enable[] the electorate to make informed decisions and give proper weight to different speakers and messages."<sup>10</sup> The law permits FEC filers to amend reports in furtherance of this interest, and, in exercising its enforcement authority, the Commission has always sought to encourage it.

In this matter, the delay in reporting a comparative handful of independent expenditures did not deprive the electorate of material information. In fact, all of the expenditures were disclosed in amended 24-hour reports – some filed just days after the initial disclosure was required, and in all but a few cases no later than the initial February monthly report.

The late reports represented only a small fraction of the Committee's activity in January and February, when the Committee made about \$15.6 million in disbursements and received about \$16.7 million in contributions. The roughly \$1.6 million in independent expenditures that are the subject of this referral constitute only about 10% of the Committee's total expenditures during that period.<sup>11</sup>

Moreover, as this was one of the first independent expenditure-only committees funding communications regarding Presidential candidates, it received unprecedented attention and scrutiny. In January and February alone, almost 2,000 articles were published in local, national, and online publications on the Committee's fundraising and the ads the Committee was airing.<sup>12</sup> Articles on the Committee appeared in *The New York Times*, *The Washington Post*, *The L.A. Times*, and other widely-read publications and blogs throughout the primary season. In addition,

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<sup>9</sup> Affidavit of Brent A. Mudd, at ¶ 11.

<sup>10</sup> *Citizens United v. FEC*, 558 U.S. 310, 365 (2010).

<sup>11</sup> The situation here contrasts with matters where the Commission has declined to overlook inadvertent reporting errors because the amounts involved were a large percentage of the committee's total activity and therefore may have deprived the public of material information. See, e.g., MUR 5741 (Charlie Melancon Campaign Committee) (2006) (committee's amendment disclosed expenditures comprising 92.8% of the committee's disbursements for the period); MUR 5647 (Virginia Foxx for Congress) (2005) (committee's amendment to disclose a \$135,000 media expenditure accounted for 69% of total disbursements for that reporting period).

<sup>12</sup> This data comes from a search of the LexisNexis news database, which includes print and web publications, for the Committee's name, during January and February 2012.

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many major news outlets reported information about the Committee's spending derived from sources other than the Commission's website, such as advertising expenditure data provided by Kantar Media through its advertising monitoring service Campaign Media Analysis Group ("CMAG").<sup>13</sup>

Even if each of the matters cited in the RAD referral had been timely disclosed in an initial 24-hour report, it would not have materially added to or altered the public's understanding of the activities of this Committee.

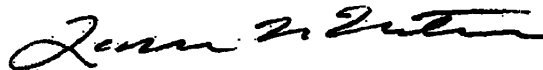
**IV. THE RAD REFERRAL SHOULD NOT BE THE BASIS FOR FURTHER COMMISSION ACTION**

As explained above, the Committee timely disclosed the vast majority of about \$14.8 million in independent expenditures made in January and February 2012. The comparatively few oversights in filing 24-hour reports during that period were corrected through amended reports filed a short time thereafter and in the February monthly report filed the next month.

The surge of spending in January and February, spurred by an unexpectedly close race in the Republican Presidential primaries, placed extraordinary demands on an inexperienced team. Nonetheless, the Committee did everything a committee should do: it hired experienced FEC counsel, communicated repeatedly with vendors, corrected its own errors, and strengthened its internal procedures to improve reporting. The reporting errors, though regrettable, were the product of mere inadvertence, and caused no harm to the electoral process. We respectfully request that the matter be dismissed.

Thank you for your consideration. If you have any questions, please contact me at (202) 344-4541.

Sincerely,



Lawrence H. Norton

<sup>13</sup> See e.g., Julie Bykowitz, *Gingrich Group Looks for New Money as Big Donor Checks Stop*, BLOOMBERG (Feb. 21, 2012) (stating that the Committee spent \$61,290 in the span of a week in relation to the Florida primary and citing to CMAG data), available at <http://www.businessweek.com/news/2012-02-21/gingrich-group-looks-for-new-money-as-big-donor-checks-stop.html>.

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